

HAROLD M. JAFFE, ESQ.

CASB #57397

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Attorney for Defendants JOHN SRAMEK and BERNADETTE SRAMEK, individually and as Trustees of the John S. Sramek, Jr. and Bernadette D. Sramek Revocable Living Trust and Harold M. Jaffe, In Pro Per

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

ALISE MALIKYAR, ROBERT JACOBSEN, CASE NO. C07-03533 WHA

Plaintiffs,

vs.

JOHN SRAMEK, BERNADETTE
*SRAMEK, HAROLD M. JAFFE, John S.
Sramek, Jr. and Bernadette D. Sramek
Revocable Living Trust, and DOES 1 - 100,

**EX PARTE APPLICATION FOR AN ORDER
SHORTENING TIME TO HEAR
DEFENDANTS' MOTION TO DISMISS SET
ON MARCH 13, 2008, OR IN THE
ALTERNATIVE, FOR THE COURT TO
DISMISS SUA SPONTE**

[FRCP 6]

Defendants.

CTRM: 9 - Hon. William Alsup

Defendants are hereby making this ex parte application for an order shortening time to hear defendants' motion to dismiss set for March 13, 2008, or in the alternative, for the Court to dismiss sua sponte, for the reasons set forth below.

On February 7, 2008, defendants filed a motion to dismiss or in the alternative for summary judgment as to a document denominated as plaintiffs' Second Amended Complaint ("SAC"). The named plaintiffs in the SAC are ALISE MALIKYAR ("MALIKYAR") who this Court has already determined on November 8, 2007 (Docket No. 47) does not have standing to bring the instant action, and a new plaintiff, ROBERT JACOBSEN ("JACOBSEN"), who is presently in Chapter 7 bankruptcy in the United States District Court for the Eastern District of Texas (Request for Judicial Notice in Support of Motion to Dismiss, filed February 7, 2008, Ex. A).

As defendants set forth in their motion to dismiss filed February 7, 2008, the Court has bent over backwards to give plaintiffs every opportunity to plead in this case. As this Court noted in its January 24, 2008 Further Order to Show Cause, "defendants have expended considerable time and

1 effort (not to mention the considerable time and effort expended by this Court).” There is no reason
2 for this matter to drag on to March 13, 2008.

3 Therefore, defendants are requesting that their motion to dismiss filed on February 7, 2008,
4 which was noticed for March 13, 2008, be heard on shortened time, at the earliest possible time,
5 consistent with the Court’s availability; or in the alternative, that the Court dismiss the Second
6 Amended Complaint *sua sponte*. See Allstate Ins. Co. v. Hughes, 358 F.3d 1089, 1093-1095 (9th Cir.
7 2003) (Court of Appeals raises real party in interest *sua sponte*] cited in Moore’s, Federal Practice,
8 3rd Ed., ¶17.13[1]).

9 Respectfully submitted,

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12 DATED: February 8, 2008 By:

/S/
HAROLD M. JAFFE, ESQ., Attorney for Defendants
JOHN SRAMEK and BERNADETTE SRAMEK,
individually and as Trustees of the John S. Sramek, Jr.
and Bernadette D. Sramek Revocable Living Trust
and Harold M. Jaffe, In Pro Per